Pacific Bell Extras computer database for calculation of customer Awards points. CR 55, ER 627, 643.[4]

The preliminary injunction issued by the district court prevents any such use or disclosure of customers' TBR billing information. CR 62, pp. 30-31, ER 702-03. The district court concluded that the TBR billing totals were "derived" by using "proprietary databases" received by Pacific Bell from AT&T, MCI and Sprint solely to allow Pacific Bell to provide billing services pursuant to the billing agreements between Pacific Bell and the carriers. CR 62, pp. 12, 30-31, ER 684, 702-03. The district court concluded that using the "proprietary databases" for any purpose other than billing was a breach of contract (CR 62, pp. 5-8, ER 677-80); a violation of section 222(a) of the Telecommunications Act of 1996 (47 U.S.C. § 222(a)), which requires each carrier to protect the proprietary information of other carriers (CR 62, pp. 8-13, ER 680-85); and a misappropriation of trade secrets (CR 62, pp. 13-16, ER 685-88).

## STANDARD OF REVIEW

A preliminary injunction will be reversed if the district court: (1) abused its discretion, or (2) based its decision on an erroneous legal standard, or (3) based its decision on clearly erroneous findings of fact. Miller v.

---

4 By the time of any such transfer, the TBR would have appeared months earlier on monthly customer telephone bills. CR 63, ER 717.

California Pacific Medical Center, 19 F.3d 449, 455 (9th Cir. 1994).

> "Where the district court is alleged to have relied on erroneous legal premises, review is plenary . . . . We review de novo issues of law underlying the district court's preliminary injunction."

Id. at 455.

## ARGUMENT

### I. THE DISTRICT COURT BASED ITS DECISION ON AN INTERPRETATION OF THE BILLING AGREEMENTS BETWEEN THE PARTIES THAT WAS ERRONEOUS, AS A MATTER OF LAW.

#### A. "Proprietary information."

The Billing Agreements between Pacific Bell and each of the parties provides that:

> "Proprietary Information described above shall . . . be held in confidence by the Receiving Party . . . shall not be disclosed to third persons but may be disclosed to contractors and agents who have a need for it . . . shall be used for the purposes stated herein; and may be used or disclosed for other purposes only upon such terms and conditions as may be mutually agreed upon by the Parties in writing."[5]

---

5 The TBR information was not, in fact, "described above" in the Billing Agreements.

CR 62, p. 6, ER 678. Plaintiffs allege in their complaint that Pacific Bell breached the Billing Agreements by allegedly making unauthorized "use or disclosure of [plaintiffs'] proprietary information." CR 1, ¶ 57, ER 13-14; CR (S)1, ¶ 78, ER 157.

Plaintiffs' further allegations make clear that the "proprietary information" in question was the billing information on customers' long-distance usage. For example, plaintiffs allege in their complaints:

> "Even the amount of a customer's total Sprint billing represents valuable proprietary information to Sprint."

CR (S)1, ¶ 12, ER 144.

> "Thus, the Billing and Collection Agreement protects against unfair appropriation of proprietary information by specifically forbidding Pacific Bell's use of Sprint's proprietary information. . . ."

CR (S)1, ¶ 23, ER 146.

> "Pacific is advertising that it will do something it has no right to do: it has no right to use, or advertise that it will use, Sprint's proprietary information, which includes monthly customer usage as measured by the total charges in the long distance portion of the customers bill. . . ."

CR (S)1, ¶ 29, ER 148.

> "Pacific Bell's advertisements make clear that Pacific intends to appropriate unfairly and use

> Sprint's proprietary information, which include monthly customer usage as measured by the total charges in the Sprint portion of the customer's bill. . . ."

CR (S)1, ¶ 40, ER 150. AT&T and MCI made essentially the same allegations in their complaint. CR 1, ¶¶ 19, 23, 31, 41, 83, ER 6, 8, 10-11, 19.

Appellants established in their opposition to plaintiffs' preliminary injunction motion, however, that the only "proprietary information" used in the Awards program--TBR dollar figures--is the "proprietary information" of telephone customers, who consent to such use. Section 222(f)(1)(B) of the Telecommunications Act of 1996 provides that:

> "The term 'customer proprietary network information' means . . . information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier. . . ."

47 U.S.C. § 222(f)(1)(B). The district court agreed, recognizing: "[t]he plain language of section 222 supports defendants' argument that all information 'contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier" is customer proprietary network information. CR 62, pp. 10-11, ER 682-83.

Nevertheless, the district court reasoned that:

> "Ownership of [the TBR] is irrelevant to this dispute. Pacific is free to obtain such billing information from the customer. At issue is Pacific's misappropriation of information from the proprietary billing databases created by plaintiffs and made available to Pacific for the limited purposes of billing and collecting for long distance services."

CR 62, p. 7, ER 679 (emphasis in original); see also CR 62, p. 10, ER 682.

> "It is the use of that database that constitutes a breach of the Billing Agreements, not the use of the TBR itself."

CR 62, p. 7, ER 679 (emphasis in original).

However, plaintiffs did not allege in their complaints that appellants had misused their "databases." Plaintiffs never utter the word "database" in their complaints. Instead, plaintiffs in their complaints alleged only that plaintiffs had misused their customer billing information. As to that claim (the only one pertinent to plaintiffs' motion for preliminary injunction), plaintiffs were clearly wrong and could not establish a likelihood of success on the merits on the claims actually pled in their complaints.

In any event, the "databases" in this case are not plaintiffs' "proprietary information." A database can be a trade secret if: (1) the data itself is the proprietary information of the owner of the database, or (2) the database uses a "unique means of managing and utilizing that

data" (in which case, that unique means might be proprietary information). One Stop Deli, Inc. v. Franco's, Inc., 1994-1 Trade Cas. (CCH) ¶ 70,507, 1993 U.S. Dist. LEXIS 17295 (W.D. Va. 1993); MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511, 520 (9th Cir. 1993), cert. dismissed, 510 U.S. 1033 (1994). Here, however, the customer billing information was not proprietary to plaintiffs; that information is the "proprietary information" of the customers. Supra, p. 10; see Integral Systems, Inc. v. PeopleSoft, Inc., 1991 U.S. Dist. LEXIS 20878, *38 (N.D. Cal. July 19, 1991) ("the information must also be proprietary to [the plaintiff] itself"). Moreover, plaintiffs have not identified with the requisite specificity (let alone sufficiently established) the ways in which their databases purportedly use a "unique means of managing and utilizing that data." One Stop Deli, supra; see Data General Corp. v. Grumman Systems Support Corp., 825 F. Supp. 340, 358 (D. Mass. 1993), remanded in part, 36 F.3d 1147 (1st Cir. 1994) ("plaintiff must specifically identify the trade secrets which were purportedly misappropriated").

Finally, plaintiffs do not, and cannot, claim that appellants copied or misused the organization or techniques in their database--at most, plaintiffs claim that appellants misused (through the TBR) the information in their database. But that information is the "proprietary information" of the customers.

B. The "commingling provision."

The district court also referred in its preliminary injunction decision to a paragraph in the Billing Agreements that provides:

> "Each Party acknowledges that a Party's Proprietary Information may be commingled with Information of the other Party. Accordingly, the Parties shall, to the extent practicable, use good faith efforts to insure that such Proprietary Information shall be masked or rendered mechanically inaccessible to the other Party. However, there may be instances in which efforts to mask or screen such Proprietary Information are impracticable, or in which disclosure is inadvertent. In such instances, the Receiving Party will neither use or disclose the Proprietary Information, except as required to fulfill its obligations under this Agreement, and shall put in place procedures as described in the preceding Paragraphs."

CR 62, p. 6, ER 678. The district court reasoned that the database created by Pacific Bell (in calculating TBR) was governed by this "commingling provision":

> "Furthermore, the billing database which contains the TBR for each customer is created by commingling plaintiffs' proprietary information with Pacific Bell's information. The use of that commingled database falls squarely within section

3(c) to Exhibit D of the AT&T/Pacific Bell Agreement, and similar provisions in the MCI/Pacific Bell and Sprint/Pacific Bell Billing Agreements."

CR 62, p. 8, ER 680.

The district court erred, as a matter of law, in interpreting the commingling provision of the Billing Agreements as governing the facts of this case. The commingling provision refers to a "Party's Proprietary Information." As discussed above, the customer billing information is the customers' "proprietary information." Moreover, the commingling provision pertains to such information that the parties expect "shall be masked or rendered mechanically inaccessible to the other Party." Clearly, the parties did not contemplate that the customer billing information at issue here would be "masked or rendered mechanically inaccessible to the other Party." Masking the customer billing information provided by plaintiffs from Pacific Bell would frustrate the preparation of customer bills, the core goal of the Billing Agreements.

At no time in the proceedings below did plaintiffs ever cite or rely upon the commingling provision (understandably,

since it is inapposite). The district court erred, as a matter of law, in basing its decision on this provision.[6]

---

6 The district court also based its decision on its erroneous view that certain purported "admissions which are before the Court clearly demonstrate that Pacific Bell's use of the TBR data from the billing databases breaches the Billing Agreements. . . ." CR 62, p. 8, ER 680. For example, the district court stated that "[t]here is also no dispute that the transmitted information is confidential and proprietary within the meaning of the Billing Agreements" (CR 62, p. 6, ER 678), citing to paragraph 16 of appellants' answers to the complaints. Paragraph 16 of appellants' answers responded to paragraph 19 of the complaints, which in the case of AT&T alleged:

> "19. AT&T alleges that AT&T's IDB requirements include both the information AT&T transmits to Pacific Bell and the formation in which AT&T sends it. AT&T's specifications for IDB requirements are highly confidential and proprietary, and all the information that is transmitted for IDB purposes is highly confidential and proprietary as well."

CR 1, ¶ 19, ER 6.

Sprint's complaint similarly alleges:

> "19. Sprint's PRB specifications include both the information Sprint transmits to Pacific and the format in which Sprint sends it. Sprint's specification for PRB are highly confidential and proprietary, and all the information that is transmitted for PRB purposes is also highly confidential and proprietary."

CR (S)1, ¶ 19, ER 146. Appellants answered:

> "16. Defendants deny the allegations in paragraph 19, except admit that the information transmitted from [plaintiffs] to Pacific Bell is [plaintiffs'] confidential and proprietary information to the extent provided in the billing agreements and applicable law. Defendants further allege that the information referred to in the second sentence of paragraph 19 is the proprietary information of the customer."

CR 41, ¶ 16, ER 391; CR (S)23, ¶ 16, ER 411. This answer affirmatively asserted that the information in issue was the "proprietary information of the customers," and that any

(continued...)

II. THE DISTRICT COURT BASED ITS DECISION ON AN ERRONEOUS INTERPRETATION OF SECTION 222 OF THE TELECOMMUNICATIONS ACT OF 1996.

Section 222(a) of the Telecommunications Act of 1996 provides:

> "(a) IN GENERAL.--Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers. . . ."

47 U.S.C. § 222(a) (emphasis added). In its complaint, plaintiff Sprint alleged with respect to section 222:

> "51. Sprint is informed and believes . . . that Pacific Bell has converted, or soon will convert, Sprint's proprietary information for its own use in contravention of the prohibitions set forth in 47 U.S.C. §§ 222(a) and (b). Sprint further is informed and believes . . . that Pacific Bell intends to disclose Sprint's proprietary information for Pacific's own marketing purposes. Sprint is further informed and believes . . . that Pacific intends to use Sprint's proprietary information to compete against Sprint in the provision of long distance services and other telecommunications

---

6(...continued)
information was confidential and proprietary only to the extent, if any, provided in the Billing Agreements and applicable law.

services, all in violation of 47 U.S.C. §§ 222(a) and (b)."

CR (S)1, ¶ 51, ER 152. AT&T and MCI make a similar allegation in their complaint. CR 1, ¶ 52, ER 12-13.

Appellants established in their opposition to plaintiffs' preliminary injunction motion, however, that the only "proprietary information" used in the Awards program--TBR dollar figures--is the "proprietary information" of telephone customers, who consent to such use. The district court agreed that this proprietary information belonged to the customer. CR 62, pp. 10-11, ER 682-83.

Nevertheless, the district court stated that: "[t]he issue is whether defendants' use of plaintiffs' databases as part of the process that is used to create the TBR database used in the PB Awards program violates the 1996 Act." CR 62, p. 10, ER 682. However, as discussed above (supra, pp. 9-11), plaintiffs alleged in their complaints that appellants misused their "proprietary information," namely, customer billing information, not that appellants had misused their "databases." Similarly, section 222(a) of the Telecommunications Act of 1996 requires a carrier to protect the confidentiality of "proprietary information."

In assuming, without any analysis whatsoever, that plaintiffs' databases were equivalent to "proprietary information" under section 222(a), the district court apparently based its decision on an erroneous interpretation of section 222(a). In fact, the "databases" in this case are not plaintiffs' "proprietary information" under section 222(a) and,

in any event, there was no breach of confidentiality of those "databases." See supra, pp. 10-12. The only "proprietary information" used in the Awards program is the TBR, which is the "proprietary information" of telephone customers, used with their consent.

The preliminary injunction is based on an erroneous interpretation of law and, accordingly, must be reversed.

## III. THE DISTRICT COURT ERRED IN HOLDING THAT PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR TRADE SECRETS CLAIMS.

Plaintiffs alleged that appellants misappropriated their trade secrets, in violation of the Uniform Trade Secrets Act, California Civil Code sections 3426-3426.10. CR 1, ER 18-19; CR (S)1, ER 156-57. For example, AT&T and MCI alleged in their complaint:

> "[¶] 79. Plaintiffs' proprietary billing information . . . derives independent economic value from not being generally known to the public or to Plaintiffs' actual or potential competitors who can obtain economic value from its disclosure or use. Further, Plaintiffs' proprietary information is, and at all relevant times has been, the subject of efforts that are reasonable under the circumstances to maintain its secrecy."
>
> "[¶] 81. Consequently, Plaintiffs' proprietary billing information, including data and records contained in invoice files, is a trade

secret as defined in California Civil Code § 3426.1(d)."

CR 1, ¶¶ 79, 81, ER 18 (emphasis added); see CR (S)1, ¶¶ 68, 70, ER 156. But, as discussed above (supra, pp. 10-11), the only "proprietary billing information" involved is TBR which is the "proprietary information" of telephone customers under section 222(f)(1)(B) of the Telecommunications Act of 1996.[7]

TBR information obviously is not a "secret" hidden from telephone customers, who receive monthly bills containing the TBR information. TBR is not a "secret" hidden from Pacific Bell, which creates the information in its own data-bases each month. Indeed, plaintiffs themselves never see TBR, since it is created by and within Pacific Bell.

Here, again, the district court focused on "databases," rather than the customer billing information at issue in the complaint, observing that databases are "compilations of

---

7 By enacting section 222(f)(1)(B), Congress did not create new law, but rather, affirmed the historical treatment of billing information as being proprietary to end-user customers. See, e.g., In the Matter of Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry) [etc.], 2 FCC Record, Vol. 10 at 3072, 3095, ¶ 155 (May 22, 1987) ("We conclude that requiring the [Bell Operating Companies] to comply with these CPNI [Customer Proprietary Network Information] safeguards for their enhanced services operations will likewise address these concerns. We believe that users and customers will be well-served by this approach. Those users and customers can still control the dissemination of their CPNI both to protect the proprietary nature of such information and to control which enhanced service providers have access to it. Network service customers that are concerned about the proprietary nature of their telecommunications information can request confidentiality for their CPNI") (emphasis added).

data" which are "transmitted in a unique proprietary format, and can only be accessed by Pacific Bell through the use of a proprietary system specifically designed for each plaintiff." CR 62, ER 687. While, in theory, a "format" can be a trade secret under certain circumstances, no "format" was ever disclosed by appellants. It is undisputed that appellants were to use aged TBR after it appeared in customer bills. CR 63, ER 717. Elsewhere, the district court itself recognized that "Plaintiffs' databases do not appear on customers' bills." CR 62, p. 11, ER 683.[8]

In short, the district court erred in holding that plaintiffs are likely to succeed on their trade secrets claim. The district court based its decision on an erroneous interpretation of the Uniform Trade Secrets Act.

---

8 The district court concluded that the alleged loss of trade secrets was irreparable harm and tipped the balance of hardships in favor of the plaintiffs, notwithstanding Pacific's showing that an injunction disallowing use of TBR would force a substantial, multi-million dollar restructuring of the program if TBR could not be used pending trial. See CR 62, pp. 24-27, ER 696-99. A fortiori, if (as discussed above) there was no "proprietary information" belonging to plaintiffs, then there was no risk that confidentiality of "proprietary information" belonging to plaintiffs would be lost, contrary to the district court's erroneous finding.

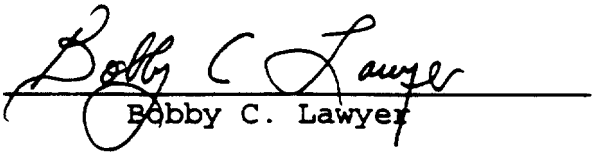
## CONCLUSION

For the foregoing reasons, appellants respectfully submit that the preliminary injunction order should be reversed.

Dated: August 26, 1996.

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM

KEVIN M. FONG
PILLSBURY MADISON & SUTRO LLP

By 
Bobby C. Lawyer

Attorneys for Appellants Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications

## STATEMENT OF RELATED CASES

Appellants are not aware of any cases in this Court that are deemed related pursuant to Ninth Circuit Rule 28-2.6.

CIRCUIT RULE 32(e) CERTIFICATION OF COMPLIANCE

The foregoing brief is double-spaced, uses monospaced typeface, and contains 21 pages.

Dated: August 26, 1996.

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM

KEVIN M. FONG
PILLSBURY MADISON & SUTRO LLP

By Bobby C. Lawyer
Bobby C. Lawyer

Attorneys for Appellants Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications

*"SEC. 222. PRIVACY OF CUSTOMER INFORMATION.*

*"(a) IN GENERAL.—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.*

*"(b) CONFIDENTIALITY OF CARRIER INFORMATION.—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.*

*"(c) CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—*

*"(1) PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.*

*"(2) DISCLOSURE ON REQUEST BY CUSTOMERS.—A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.*

*"(3) AGGREGATE CUSTOMER INFORMATION.—A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor.*

*"(d) EXCEPTIONS.—Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—*

*"(1) to initiate, render, bill, and collect for telecommunications services;*

*"(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or*

*"(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.*

*"(e) SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.*

*"(f) DEFINITIONS.—As used in this section:*

*"(1) CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term 'customer proprietary network information' means—*

*"(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and*

*"(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier;*

*except that such term does not include subscriber list information.*

*"(2) AGGREGATE INFORMATION.—The term 'aggregate customer information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.*

*"(3) SUBSCRIBER LIST INFORMATION.—The term 'subscriber list information' means any information—*

*"(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and*

*"(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.".*

Docket No. 96-16476

PROOF OF SERVICE BY MAIL

I, Merle Laeha, hereby declare:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Madison & Sutro LLP in San Francisco, California.

2. My business address is 225 Bush Street, San Francisco, California. My mailing address is Post Office Box 7880, San Francisco, CA 94120-7880.

3. I am readily familiar with Pillsbury Madison & Sutro LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service; in the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

4. On August 26, 1996, at San Francisco, California, I served a two copies of the attached document titled APPELLANTS' OPENING BRIEF and one copy of EXCERPTS OF RECORD by placing them in an envelope clearly labeled to identify the person being served at the address shown below, which envelope was then sealed and placed in interoffice mail for collection and deposit in the United States Postal Service on that date following ordinary business practices:

[See Attached Service List]

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of August, 1996, at San Francisco, California.

_____

Merle Laeha

Docker No. 96-16476

SERVICE LIST

McCUTCHEN, DOYLE, BROWN & ENERSEN, LLP
REBECCA A. LENABURG
LAURA MAZZARELLA
Three Embarcadero Center
San Francisco, CA 94111-4066

LEBOUF, LAMB, GREENE & MACRAE, LLP
R. SCOTT PUDDY
THOMAS E. McDONALD
One Embarcadero Center, 4th Floor
San Francisco, CA 94111

GEORGE S. DUESDIEKER
DARREN S. WEINGARD
SPRINT LAW DEPARTMENT
1850 Gateway Drive, 4th Floor
San Mateo, CA 94404-2467

ORIGINAL
FILED

JUL 03 1996

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AT&T COMMUNICATIONS OF CALIFORNIA, et al.,

Plaintiffs,

vs.

PACIFIC BELL, et al.,

Defendants.

CONSOLIDATED ACTION

No. C 96-1691 SBA

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

This matter comes before the Court on plaintiffs' motion for preliminary injunction. Having read and considered the papers submitted in connection with this matter, as well as the arguments of counsel at the hearing, the Court GRANTS plaintiffs' motion for a preliminary injunction as set forth in detail below.

## BACKGROUND

Plaintiffs AT&T Communications of California ("AT&T"), MCI Telecommunications Corp. ("MCI"), and Sprint Communications Co. Ltd. ("Sprint") are the three major long distance telecommunications service providers in the United States. Defendant Pacific Bell Telesis Group is the parent company of defendants Pacific Bell, Pacific Bell Communications, and Pacific Bell Extras. Pacific Bell is a local telecommunications service provider in the State of California. Pacific Bell Communications is a subsidiary of

Pacific Bell that intends to provide long distance telecommunications services. Pacific Bell Extras was incorporated in December 1995 for the sole purpose of operating the "Pacific Bell Awards Program".

This action concerns the Pacific Bell Awards Program ("PB Awards"). PB Awards is an incentive program, similar to a airline "frequent flyer" program, which awards customers award "points". These points can be redeemed for discounts on goods and services provided by third-party "program participants" (also referred to as "awards partners"). (Hewitt 5/7/96 Decl. ¶¶ 4-17.)

PB Awards points are awarded based on the "total billed revenue" ("TBR") which appears on a customer's monthly Pacific Bell bill. Customers who participate in the program, and whose TBR for any given month is $50.00 or more, receive ten points for each dollar of TBR.

The TBR amount includes "any telephone usage billed through Pacific Bell, including local and local toll calling, custom calling features, charges billed through Pacific Bell for one of its affiliates . . . and calls for any long distance carrier billed to that customer's account also are included." (Hewitt 5/7/96 Decl. ¶ 19.)

The last portion of the TBR is the subject of these consolidated actions. Plaintiffs each have contracts with Pacific Bell ("the Billing Agreements"), whereby Pacific Bell provides billing and collection services to plaintiffs' customers. Each customer receives a single monthly bill which contains the charges which have been accrued with Pacific Bell

and one or more of the plaintiff long distance companies.

In order to provide this unitary billing service, plaintiffs regularly transmit electronic databases to Pacific Bell which contain billing data for their customers. This billing data is sent in a unique, proprietary format. Pacific Bell receives the data and processes it, performs checks to ensure that the data is accurate, and then places the data on each customer's bill along with all Pacific Bell charges. The bottom line of each bill reflects the customer's TBR which is paid in a lump sum to Pacific Bell. The provision of billing services, and the use and confidentiality of the data transmitted to Pacific Bell by the plaintiffs, are governed by the Billing Agreements. (Elizondo Decl. ¶¶ 4-8.)

The PB Awards program was launched on March 31, 1996. (Hewitt 5/7/96 Decl. ¶ 4.) On May 7, 1996 plaintiffs AT&T and MCI filed civil action number C-96-1691-SBA, alleging several claims against the defendants, all related to the PB Awards program and specifically to the use of long distance information in the PB Awards program.[1] On the same day, plaintiff Sprint filed civil action number C-96-1692-SBA, alleging similar claims.[2] Plaintiffs filed requests for a

---

[1] These plaintiffs assert claims for violation of the Federal Telecommunications Act of 1996, Breach of Contract, Unfair Competition under federal and state law, Breach of the Covenant of Good Faith and Fair Dealing, Interference with Contractual Relations, Misappropriation of Trade Secrets and Unjust Enrichment. (96-1691 Complaint.)

[2] Sprint's complaint alleges claims for violation of the Federal Telecommunications Act of 1996, Breach of Contract, Unfair Competition under federal and state law, Breach of the